

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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US DISTRICT COURT E.D.N.Y.

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8/20/19
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EDUARDO MALDONADO LOPEZ, on behalf of :
himself and all others similarly situated, :

Plaintiff, :

-against- :

JOHN SCHMIDT, ROSE SCHMIDT, :
WHEATFIELD DISTRIBUTORS LLC, and :
ROBERT VOGLER, :

Defendants. :
: :
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ORDER

15-CV-593 (ENV) (RER)

VITALIANO, D.J.

Plaintiff Eduardo Maldonado Lopez filed this action, on February 6, 2015, against defendants Robert Vogler, John Schmidt, Rose Schmidt, and Wheatfield Distributors LLC, alleging violations of the Fair Labor Standards Act ("FLSA"), 29 U.S.C. § 201 *et seq.* Following the entry of default against Vogler, and a subsequent Court order setting a deadline for plaintiff to move for default judgment against him, Vogler filed a letter motion to dismiss "on the grounds that the Judge failed to answer [his] question of legal authority" under FLSA. *See* Apr. 25, 2019 Order; Dkt. 93. Upon referral of the motion, Magistrate Judge Ramon E. Reyes, Jr. issued a Report and Recommendation (the "R&R") on July 31, 2019. *See* Dkt. 96.

As explained in the R&R, the "question" at issue was Vogler's prior inquiry regarding whether FLSA applied to this action—a question that had been raised in the posture of a prior motion to dismiss, which was denied. *See* R&R at 2-4. The R&R notes that "Vogler did receive an answer to his *motion*, albeit one that he did not like. The answer was that at the stage of the proceedings in which Vogler asked his 'question,' the case would have to proceed through

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discovery.” *Id.* at 4 (emphasis in original). Judge Reyes thus recommends denial of the instant motion, which simply seeks to relitigate issues already resolved on Vogler’s prior motion, and lacking in substantive merit. *Id.* at 4-6. Notice of time to object to the R&R was given, but no party has objected within the time to do so. *Id.* at 6-7; Aug. 2, 2019 Aff. of Service, Dkt. 98.

Discussion

Where no party has objected to a report and recommendation, clear-error review applies. *See Dafeng Hengwei Textile Co. v. Aceco Indus. & Commercial Corp.*, 54 F. Supp. 3d 279, 283 (E.D.N.Y. 2014). Having carefully reviewed the R&R in accordance with this standard, the Court finds it to be correct, well-reasoned, and free of any clear error. The Court, therefore, adopts the R&R, in its entirety, as the opinion of the Court.

Conclusion

For the foregoing reasons, the R&R is adopted in its entirety as the opinion of the Court, and the letter motion to dismiss is denied. The Clerk of Court is directed to mail a copy of this Order to *pro se* defendant Vogler. The parties are referred to Magistrate Judge Reyes for continued pretrial management.

So Ordered.

Dated: Brooklyn, New York

August 19, 2019

/s/ USDJ ERIC N. VITALIANO

ERIC N. VITALIANO

United States District Judge